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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.269/99

Date of Order : 5.1.2000

BETWEEN :

G.Viswanatham

..Applicant.

AND

1. The Regional Director,
Employees State Insurance Corp.,
AP Region, Hyderabad.
2. The Regional Director,
Employees State Insurance Corporation,
Panchdeep Bhavan, N.M.Joshi Marg,
Lower Parel, Mumbai.
3. Employees State Insurance Corporation,
Represented by its Director General,
Panchdeep Bhavan, Kotla Road, New Delhi. ..Respondents.

Counsel for the Applicant

..Mr.P.Kishore Rao

Counsel for the Respondents

..Mr.N.R.Devraj

CORAM :

HON'BLE JUSTICE SHRI D.H.NASIR : VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

O R D E R

[As per Hon'ble Shri R.Rangarajan, Member (Admn,)]

Mr.P.Naveen Rao for Mr.P.Kishore Rao, learned counsel for the applicant and
Mr.N.R.Devraj, learned standing counsel for the respondents.

2. The applicant in this OA was posted as Manager at Local Office, Kalachowky of Regional Office, Mumbai Region w.e.f.29.7.94 to 29.8.97. He was allotted staff quarter No.26/419 at Andheri w.e.f.4.7.93. It is suspected by the department that the applicant had sublet that quarter. Hence a team of officers comprising of Joint Director, Accounts Officer and Assistant Regional Director conducted surprise check of the said quarter allotted to him on 22.3.96 at 6.30 A.M. They came to the conclusion that the said quarter was partially sublet by the applicant and they submitted the inspection report which is enclosed at page-6 of the reply. The



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applicant was given an eviction order by order No.31-D-35-28(AVC)I/A.G.III/96, dated 15.5.96 (page-9 to the reply) stating that the competent authority will initiate disciplinary action and action of recovery of penal license fees/damages and canceling the license of the above quarter issued to the applicant herein with further order that he will be debarred for allotment of quarters for 5 years. That order was issued under Public Premises (eviction of unauthorized occupants) Act, 1971. Thereafter another notice was issued on 2.9.96 (page-11 to the reply) under Sub-section (i) and Clause (b) (ii) of Sub-section (2) of Section 4 of the Public Premises (eviction of unauthorized occupants) Act 1971 asking him to ~~the applicant was informed~~ to vacate the quarter ^{and} within 15 days from the date ~~of~~ ^{it is stated that} answer all the material questions concerned with the matter on 17.9.96. It is stated that the applicant attended that call. By order dated 15.10.96 (page-13 to the reply) ~~issue of that order and~~ in the event of refusal or failure to comply with the order within the period of 15 days as specified above the applicant and all persons who may be in occupation of quarters are liable to be evicted from the said quarters, if need be by use of such force as may be necessary. Thereafter the applicant submitted an application for extending the period of stay. That was agreed to and he was informed by the order No.31-d-35-28/(26/419)/AVC/Genl.III , dated 19.6.97 (page-17 to the reply) that he should vacate the quarter on or before 30.6.97 and it is also stated in that order that the extension up to 30.6.97 is on the condition to pay the damages for the period of unauthorized occupation of the staff quarter. The applicant vacated the quarter on 8.9.97.

3. In the meantime the applicant was transferred to AP Region and was initially posted to Visakhapatnam and thereafter he was transferred to Hyderabad. The Bombay Region of ESIC Unit informed the respondent at Hyderabad to levy the penal rent on monthly basis by order dated 20.3.98 (A-9, page-19 to the OA) for the unauthorized occupation for the period from 15.6.96 to 8.9.97. By the impugned order No.52.D/11/20/98-Constr. Dated 3.8.98 (A-4, page-14 to the OA) the applicant was informed that an amount of Rs.32,358-60 ps. will be recovered from him as a damage rent for unauthorized occupation of the quarter for the period indicated above.

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5. This OA is filed to set aside the impugned order of R-2 bearing No.31-D-35-28(26/419)/AVC/Constrn, dated 20.3.98 and the consequential order of R-1 dated 3.8.98 contained in U.O.Note No.52.D/11/20/98-Constrn. and for a consequential direction to the respondents not to recover any amount from the applicant.

6. A reply has been filed in this OA. We have perused the affidavit as well as the reply affidavit and heard both sides.

7. The main contention of the applicant in this OA is that before recovery the damage rent he should have been given a notice and on that basis a decision should have been taken by the respondents before recovering the same. As such a notice was not issued, the impugned notice dated 3.8.98 cannot be sustained and has to be set aside.

8. It was admitted by the applicant himself that one Sri Suresh Rajaiah was staying with him though it is stated that he ^{was} not paying any rent to him. The inspection report of the 3 officers mentioned above was submitted on 22.3.96 wherein it is stated under item (22) that the house is subletted partially. That has been brought to the notice of the applicant herein also who has signed on that inspection note as can be seen from page-6 of the reply. It is also seen that Sri Suresh Rajaiah had also accepted that he lives with him in the quarter and that statement is also seen by the applicant herein. When the applicant asked for the extension of time to vacate the quarter he was informed by the letter dated 19.6.97 (page-17 to the reply) that he is permitted to vacate the quarter on or before 30.6.97 subject to the condition that he will pay the damages for the period of unauthorized occupation of the staff quarters. All the above notings and correspondence are in the know of the applicant. If so it is not understood what will be the repercussions if a show cause notice before issue of the impugned notice dated 3.8.98 is not served on him. In our opinion the serving of show cause notice will serve no purpose. The applicant is fully aware that Sri Rajaiah is occupying the quarter along with him. Whether said Sri Rajaiah is paying rent or not is not a very material point. The unauthorized staying of the quarter led to the issue of notice to vacate the quarter initiating disciplinary proceedings. When such a bear facts

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are available before him it is up to the applicant to challenge those earlier details, so that if at all any relief has to be given that can be given at that time. The applicant kept silent. Which means that he had accepted the alleged charges that he had subletted his quarter to somebody else. To avoid any unpleasantness he himself should have gracefully vacated the quarter and paid the damage rent. Without that he occupied the quarter unauthorisedly and now approached the Tribunal for relief for setting aside the order. Such an action on the part of a responsible government servant cannot be accepted. It only shows that the applicant is of the views that he can commit any mistake and get away without any injury. Such an attitude on the part of the government servant cannot be accepted and tolerated.

9. The applicant submits that the said Sri Suresh Rajaiah was staying with him, as he was related to him and staying with him without paying any rent. Any government servant cannot allow outsiders even relatives to stay with him for long without a proper permission from the government, so far that person is not his dependent. Nowhere it is brought out in the OA affidavit that Sri Suresh Rajaiah is dependent on him and hence he is staying with him. It is evident from the letter at page-8 of the reply that Sri Suresh Rajaiah himself had accepted that he is working as a Technician in Film Industry and that goes to show that Sri Suresh Rajaiah is not a dependent member of the applicant herein. Hence the applicant should not have allowed Sri Rajaiah to stay with him without proper permission from the government even if Sri Suresh Rajaiah was not paying rent. Allowing Sri Suresh Rajaiah to stay with him is against the rule and there is no illegality if the respondents come to the conclusion that the applicant had committed a misconduct on that basis.

10. The second contention of the applicant herein is that he was given extension to stay there by the order dated 19.6.97 up to 30.6.97. Hence if at all any damage rent has to be recovered it should be for a period beyond 30.6.97 and not from an earlier period. We do not know whether the applicant had scrutinised the letter dated 19.6.97 with full attention. It clearly states that he has been given permission to stay in the quarter up to 30.6.97 on the condition that he will pay damages for the period of

unauthorized occupation of staff quarter. It clearly shows that the respondents had permitted him to stay in the quarter up to 30.6.97 levying the damages right from the date of occupying the quarter unauthorisedly i.e. from 15.7.96. If so the request of the applicant now to levy the damage rent from 19.6.97 has no legs to stand and it is an untenable request and it has to be rejected.

11. In our opinion the respondents have dealt with him very reasonably. The unauthorized occupation of quarter or subletting the quarter is a misconduct. Under the CCS Rules the applicant can be taken up for the misconduct. The respondents probably on humanitarian consideration did not resort to the disciplinary action. We do not suggest to the respondents to initiate disciplinary action against him.

12. The learned counsel for the respondents submit that there is provision for levying damage rent in view of the O.M No.18011(12)/73-Pol.III, dated 27.8.87 (page-23 to the reply). When such an OM giving guidance of how to calculate the damage rent is available the applicant cannot resist against that. However if the applicant feels that the OM is not properly adhered to he is at liberty to get the calculation from the respondent authorities for his perusal.

13. In view of what is stated above, we find no merit in the OA and the same is dismissed accordingly. But the recovery should be in easy installments so that the applicant may not be put to financial difficulty. The respondents should give the details of recovery of the damage rent amounting to Rs.32,358-60 ps. if the applicant requests for the same.

14. No costs.



(R.RANGARAJAN)
Member(Admn.)


(D.H.NASIR)
Vice Chairman

Dated : 5th January, 2000
(Dictated in Open Court)

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